

**IN THE JUSTICE OF THE PEACE COURT NO. 16
OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

ERA HARRINGTON REALTY,

Plaintiff,

v.

COLLEEN MARSHALL,

Defendant.

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C.A. No. JP16-11-004862

Appearances: ERA Harrington Realty ("plaintiff") was represented by
Fernando Ruiz III under Supreme Court 57.

Colleen Marshall ("defendant") appeared *pro se*.

Before: **ARNDT**, Deputy Chief Magistrate; **HUTCHISON** and
WALL, Magistrates.

ORDER

On September 16, 2011 the plaintiff filed this action seeking to recover unpaid rent, late fees, returned check fee and possession of the property located at 127 Quails Nest Drive, Dover, Delaware. On October 12, 2011 a trial was held and decision was reserved. By Court Order dated October 13, 2011, judgment was entered on behalf of the plaintiff. On October 20, 2011 the defendant filed a timely appeal pursuant to 25 Del. C. § 5717(a) and a trial *de novo* was held on November 4, 2011. After hearing testimony and reviewing the evidence, the panel finds by unanimous verdict in favor of plaintiff.

TESTIMONY OF PARTIES

Plaintiff introduced twelve exhibits.¹ Relevant documents include the rental agreement between the parties dated April 5, 2011² and the 5-day notice dated September 6, 2011 with a copy of the certificate of mailing.³ The lease agreement provides for monthly rent in the amount of \$1,600.00. Rental payments more than five days past due incur an additional late charge of five percent of the monthly rental amount. The lease agreement was signed by defendant indicating receipt of a copy of the landlord tenant code. Under oath, the defendant admitted that she did not pay rent for August, September, October and November 2011. Defendant also admitted that she issued a check for rent for the month of August, which was returned by the bank for insufficient funds.

Defendant contends that she did not pay rent because there were repair and maintenance issues that remained unresolved throughout the period of tenancy. Defendant testified that the kitchen sink leaked, the air conditioner and heat did not work and the ice maker to the refrigerator needed to be fixed. Defendant complains that her electric bill increased because of the problem with the air conditioner. Defendant made reference to two exhibits: (1) A letter dated September 15, 2011 addressed to Mr. Ruiz requesting repairs to the ice maker, the air conditioner and the leak under the kitchen sink,⁴ and (2) A purchase order dated October 2, 2011 in the amount of \$620.00 from World Wide Contractors Inc. which describes the following repairs: "filter replaced, unclog line going into home from unit, fix leak under kitchen sink."⁵ Defendant contends that she should not have to pay rent because plaintiff did not make the requested repairs.

¹ The Court ruled that damages were not relevant to this summary possession action.

² Plaintiff's Exhibit 5.

³ Plaintiff's Exhibit 10.

⁴ Attached to Plaintiff's Exhibit 5.

⁵ Defendant's Exhibit 1.

DISCUSSION

After considering the testimony and evidence presented, the panel finds that plaintiff has proven their case by a preponderance of the evidence. Plaintiff provided the required 5-day notice with certificate of mailing and the lease agreement. Defendant admitted under oath that she has not paid rent since August.

As to defendant's claims concerning repair and maintenance issues, the panel finds that defendant did not raise any issues sufficient to support a finding that would require rent abatement. Defendant's contention that she is not required to pay any rent because the landlord failed to repair the leased premises is improper and not supported by the landlord tenant code. The landlord is required to provide essential services under 25 *Del. C.* § 5308 which include hot water, heat, water or electricity. Defendant's testimony that she had no heat was not supported by any documentation or notice to the landlord as required by 25 *Del. C.* § 5308(a)(2) which states in part: "Upon written notice to the landlord [a tenant may] keep $\frac{2}{3}$ per diem rent accruing during any period when hot water, heat, water, electricity or equivalent substitute housing is not supplied...." Defendant's letter dated September 15, 2011 does not provide notice that she did not have heat. August and September are not months that would typically require heat. Air conditioning is not an essential service as set forth by this statute.

Defendant's remedies relating to the rental unit for repairs to the sink, air conditioning and ice maker and deduction from rent are governed under 25 *Del. C.* § 5307 which provides as follows:

(a) If the landlord of a rental unit fails to repair, maintain or keep in a sanitary condition the leased premises or perform in any other manner required by statute, code or ordinance, or as agreed to in the rental agreement; and if after being notified in writing by the tenant to do so the landlord:

(1) Fails to remedy such failure within 30 days from the receipt of the notice; or

(2) Fails to initiate reasonable corrective measures where appropriate, including, but not limited to, the obtaining of an estimate of the prospective costs of the correction, within 10 days from the receipt of the notice;

Then the tenant may immediately do or have done the necessary work in a professional manner. After the work is done, the tenant may deduct from the rent a reasonable sum, not exceeding \$200, or 1/2 of 1 month's rent, whichever is less, for the expenditures by submitting to the landlord copies of those receipts covering at least the sum deducted.

However, the statute further states at 25 *Del. C.* § 5307(c):

A tenant who is otherwise delinquent in the payment of rent may not take advantage of the remedies provided in this section.

Defendant has violated the rental agreement by failing to pay rent and remains in default after the landlord's notice as required by 25 *Del. C.* § 5502(a). Plaintiff is entitled to possession of the rental unit pursuant to 25 *Del. C.* § 5702(2) which states in part: "Unless otherwise agreed in a written rental agreement, an action for summary possession may be maintained under this chapter because ... (2) The tenant has wrongfully failed to pay the agreed rent."

CONCLUSION

Based on the foregoing, the panel finds by unanimous verdict in favor of plaintiff ERA Harrington Realty and against defendant Colleen Marshall. Therefore, the Court enters judgment in favor of ERA Harrington Realty and against defendant Colleen Marshall as follows:

Amount claimed \$5,253.32⁶
Court Costs \$40.00
Post Judgment Interest @ 5.75%
\$53.33 Per Diem Rent beginning 11/5/11 until Possession
Returned Check Fee \$30.00
Possession to Plaintiff

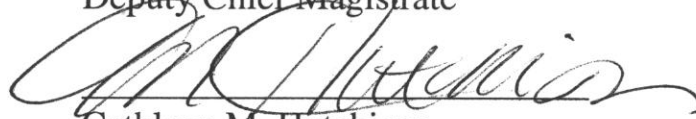
The Court announced its decision in open court on November 4, 2011 and reduced it to writing this date.

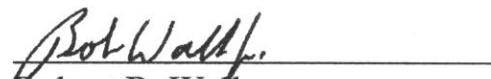
IT IS SO ORDERED this 8th day of November, 2011.

Trial De Novo Panel


Ernst M. Arndt

Deputy Chief Magistrate


Cathleen M. Hutchison
Justice of the Peace


Robert B. Wall
Justice of the Peace

⁶ Amount claimed includes: Monthly Rent in the amount of \$1,600.00 for August, September, October (\$4,800.00); Per Diem Rent in the amount of \$53.33 for 4 days in November (\$213.32); and late fees of \$80.00 monthly for August, September and October (\$240.00).